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CORPORATIONS

Milton M. Harrison*

When a corporate officer is injured as a result of another's negligence and the corporation suffers a loss of income due to his temporary incapacity, who is the proper party to recover for the loss of income? In *Baughman Surgical Associates, Ltd. v. Aetna Casualty & Surety Co.*,¹ one of two physicians practicing medicine as a professional corporation was injured by the negligent driving of defendant's insured. As a result of the accident the physician was unable to practice medicine for a period of time. The professional corporation sought to recover for its loss of income resulting from the accident. The First Circuit Court of Appeal held that such damages were "too remote, too speculative and evasive to prove" and could not be recovered by the corporation.

In *Afeman v. Insurance Company of North America*,² the plaintiff, 90% shareholder in a corporation, was injured. He contended that he should recover for loss of income to the corporation because the loss was, in fact, 90% his. Although the Fourth Circuit Court of Appeal found that loss of income to the corporation was not causally connected to the accident and the inability of plaintiff to work, it said that if the corporation *had* suffered a loss, "then only that corporation can sue to recover it."³

Baughman and the dictum in *Afeman* pose a difficult problem for corporate officer-shareholders in closely-held corporations. If the inability of the injured officer to work for a period of time diminishes corporate income, the corporation suffers the loss and the injured officer may not recover that element of damages. Under *Baughman* the corporation may not recover because the damages to it are too remote and speculative. A tortfeasor thus is relieved of paying for a cor-

* Professor of Law, Louisiana State University. The most significant decision in corporations, *Noe v. Roussel*, 310 So. 2d 806 (La. 1975), dealing with the fiduciary obligation of a liquidator of a corporation to the shareholders and a determination of the burden of proof to show fairness or unfairness in "self-dealing" by the liquidator, is discussed in Note, 36 LA. L. REV. 320 (1975), and is therefore not discussed here.

1. 302 So. 2d 316 (La. App. 1st Cir. 1974).

2. 307 So. 2d 399 (La. App. 4th Cir. 1975).

3. *Id.* at 403.

poration's loss of income as an element of damages in such a situation.⁴

Two cases called for an interpretation of the statutory requirements for furnishing reports to shareholders.⁵ In *Jones v. Dibert, Bancroft & Ross Co.*,⁶ the attorney for the succession of a deceased shareholder made a formal demand on the corporation for copies of balance sheets and profit and loss statements for specified years.⁷ The president of the corporation replied on behalf of the corporation, stating "that the corporation was closely held and did not divulge financial information."⁸ Subsequently, the attorney informed the corporation that the succession, as owner of 2.4 percent of outstanding stock,⁹ would examine the corporate books. The corporation allowed the succession representative access to all records except those containing the addresses of shareholders. In a suit for damages for the disallowance under Louisiana R.S. 12:172(B)¹⁰ and to compel compliance with the inspection procedures of Louisiana R.S. 12:103, the First Circuit Court of Appeal awarded damages in the amount of fifty dollars per day for refusal to submit the information required by Louisiana R.S. 12:102(B).¹¹ In addition, the judgment re-

4. This is apparently the result in a case in which the corporation has continued to pay the injured party his full wages, since the party made no claim for them. Presumably general tort principles would allow recovery by the worker for his lost wages if indeed he was not paid. *Cf.* LA. CIV. CODE art. 2315.

5. *See* LA. R.S. 12:102 (Supp. 1968), as amended by La. Acts 1970, No. 50, § 6 and La. Acts 1972, No. 383, § 1; LA. R.S. 12:103 (Supp. 1968); LA. R.S. 12:172 (Supp. 1968).

6. 308 So. 2d 369 (La. App. 1st Cir. 1975).

7. *See* LA. R.S. 12:102 (Supp. 1968), as amended by La. Acts 1970, No. 50, § 6 and La. Acts 1972, No. 383, § 1.

8. *Jones v. Dibert, Bancroft & Ross Co.*, 308 So. 2d 369, 370 (La. App. 1st Cir. 1975).

9. *See* LA. R.S. 12:103 (Supp. 1968).

10. LA. R.S. 12:172(B) (Supp. 1968): "If any officer of a corporation neglects or refuses to mail or deliver to any shareholder, within fifteen days after receipt of a written request by the shareholder therefor, the report prescribed by R.S. 12:102(B), he shall be under a penalty of fifty dollars, recoverable by the shareholder, for every day such officer neglects or refuses to mail or deliver the report thereafter."

11. LA. R.S. 12:102(B) (Supp. 1968): "Every corporation, and every foreign corporation doing business in this state, shall once in every calendar year, upon the written request of any shareholder of record, deliver to the shareholder, or send to him by mail addressed to his last known address, a report signed by the president or vice-president and secretary or assistant

quired that the succession representative be given access to the addresses of present shareholders. The court recognized that in some previous cases¹² the penalties had not been imposed despite the specific statutory language, but in those cases the corporations were insolvent and lacked funds with which to provide the data. The court considered the succession of the deceased shareholder as the shareholder entitled to the information.¹³

The Fourth Circuit Court of Appeal¹⁴ ordered a defendant corporation to furnish the condensed balance sheet required by Louisiana R.S. 12:102(B). The corporation had submitted the information using more modern accounting terminology than that in the statute, with the advice to shareholders to "consult a Certified Public Accountant . . . to analyze the report and show you where each of these items are [sic] set forth."¹⁵ The court stated that the corporation is obliged to state the items as required under the statute and shareholders are not obliged to hire an accountant in order to be advised of the items specified.¹⁶

secretary, containing the information hereinabove required to be contained in the last annual report [i.e., the post office address and municipal address of its registered office, the name and address of each registered agent, the name, address and expiration of term of office of all directors and officers, and the number of issued shares of each class of its authorized stock] of the corporation preceding said request, together with a condensed balance sheet . . . as of the last day of, and a combined statement of income and earned surplus for, the last preceding fiscal year ended more than four months before receipt of such request."

12. See, e.g., *Leaman Corp. v. Morrison*, 258 So. 2d 691 (La App. 4th Cir. 1972).

13. 308 So. 2d at 371.

14. *Burguières v. J.M. Burguières Co.*, 312 So. 2d 179 (La. App. 4th Cir. 1975).

15. *Id.* at 181.

16. *Id.*